IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14418 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KHUMANSINH JIVANJI VAGHELA

Versus

DISTRICT PRIMARY EDUCATION OFFICER

Appearance:

1. Special Civil Application No. 14418 of 2003

MR BS BRAHMBHATT for Petitioner No. 1

MR HS MUNSHAW for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.S.SHAH

Date of decision: 08/09/2004

ORAL JUDGEMENT

Rule. Mr HS Munshaw waives service of Rule for the respondents.

In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. In this petition under Article 226 of the Constitution, the petitioner challenges his continued suspension from service from 13.1.1994 onwards.

3. By order dated 13.1.1994 (Annexure "A"), the petitioner, a teacher in the primary school, was suspended from service on the ground that he was arrested and detained in judicial custody for more than 48 hours for an offence punishable under Sections 498-A, 306, 176 and 201 IPC. The petitioner was ultimately tried in Sessions Case No.51 of 1993 wherein he was acquitted by the learned Sessions Judge, Mahesana by judgment dated 21.1.1994. The petitioner thereupon made representations for reinstating the petitioner in service but the authorities have continued the petitioner under suspension and have continued to pay him 75% salary on the ground that Criminal Appeal No.425 of 1994 filed by the State against the aforesaid order of acquittal is admitted by this Court.

4. The learned counsel for the petitioner has relied on the decision of the Division Bench of this Court in State vs. BC Dwivedi, 24 (2) GLR 1315 holding that where an employee is acquitted in a criminal case, mere pendency of the appeal against acquittal cannot justify continued suspension.

5. On the other hand, Mr Munshaw for the respondent-authorities has submitted that since acquittal appeal is still pending, ultimately if the appeal is allowed and the petitioner is convicted, the petitioner would be liable to be dismissed from service.

6. Having heard the learned counsel for the parties, it appears to the Court that the controversy raised in this petition is squarely covered by the decision of the Division Bench of this Court in State vs. BC Dwivedi, 24 (2) GLR 1315, which has also been followed by another learned Single Judge of this Court in Special Civil Application No.6389 of 1998. In the case of State vs. BC Dwivedi (supra), the Division Bench has laid down the following principles:-

"The contention that in as much as the State Government has preferred an appeal from the judgment and order of the Special Judge acquitting the respondent-petitioner, the power of suspension is still available to the authority concerned, is not correct since the concept of Criminal Law has a well recognised connotation including sentence, that is to say, the trial

> concludes with the judgment of acquittal or conviction. Merely because the acquittal appeal has been preferred, it cannot be said that the trial continues. The alternative contingency of suspending a Government employee is contemplation of disciplinary proceeding or its pendency is also not in existence in the present case since no inquiry has been established much less no charge sheet has been issued though the employee was suspended in the year 1980 and criminal case was ended by his acquittal in 1982. The power of suspension under Rule 5, therefore, comes to an end since none of the contingencies provided in clauses (a) and (b) of Rule 5(1) of the Gujarat Civil Services (Discipline & Appeal) Rules, 1971, is in existence."

In view of the aforesaid principles, the continued suspension of the petitioner has to be declared as illegal.

7. The petition is accordingly allowed and the respondents are directed to reinstate the petitioner in service, subject to the final outcome of Criminal Appeal No.425 of 1994. This direction shall be complied with by 30th September 2004, if the order is served by 15th September 2004.

Rule is made absolute to the aforesaid extent.
Direct Service is permitted.

(M.S. SHAH, J.)
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